



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

November 6, 1961

Honorable Jack Hardee
District Attorney
3rd Judicial District
Athens, Texas

Opinion No. WW-1186

Re: Whether Article 1334 of
the Penal Code applies
to third party wire
tapping on telephone
lines where a third
party taps a telephone
and intercepts a conver-
sation between two other
parties and related
questions.

Dear Mr. Hardee:

You have requested an opinion as follows:

"Please give me an opinion as to whether or
not wire tapping, that is where a third party
taps a telephone line and intercepts and re-
cords a conversation between two other parties,
comes under the above article."

Article 1334 of Vernon's Penal Code is as follows:

"If any person shall intentionally break, cut,
pull or tear down, misplace or in any other
manner injure any telegraph or telephone wire,
post, machinery, or other necessary appurte-
nances to any such line, or in any way wil-
fully obstruct or interfere with the trans-
mission of messages along such telegraph or
telephone line, he shall be confined in the
penitentiary not less than two nor more than
five years or be fined not less than one
hundred nor more than two thousand dollars."

The court in Southwestern Telegraph & Telephone Co.
v. Priest, 72 S.W. 241 (Civ. App. 1903), held:

"To constitute an offense under this article
/1334 V.P.C./, there must have been a break-
ing, cutting, etc., of some wire, post,
machinery, or other necessary appurtenance,

in such manner as to interfere with the transmission of messages along the line."


It is the opinion of this office that "wire tapping" as you defined it will not constitute a violation of the above Article of the Penal Code in the absence of a willful obstruction or interference with the transmission of messages along such telephone lines. The interception and the recording of a conversation between two other parties would not of itself be an obstruction or interference with that conversation.

S U M M A R Y

The "tapping" and recording of a telephone conversation does not constitute a willful obstruction or interference with the transmission of messages as to violate Article 1334 of Vernon's Penal Code.

Yours very truly,

WILL WILSON
Attorney General of Texas

By 
J. T. Walker
Assistant Attorney General

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APPROVED:

OPINION COMMITTEE
W. V. Geppert, Chairman
Joseph Trimble
Elmer McVey
Riley Fletcher

REVIEWED FOR THE ATTORNEY GENERAL
BY: Houghton Brownlee, Jr.